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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,916	06/21/2001	Shigehiro Kondo	42826.00008	7451

30256 7590 04/27/2004

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EXAMINER	
WEINSTEIN, STEVEN L	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/887,916	KONDO, SHIGEHIRO	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 January 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5-7 and 9-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,5-7 and 9-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,5-7 and 9-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krubicza (Ep '536) in view of applicant's admission of the prior art, Spack (GB '305), Matsuki (Jp '160), further in view of Kanai (Jp '340), Mikami et al (Jp '365) and Richter (DE '160), further in view of Tajima (Jp '772), Ortiz (Enyclopedia of Herbs...), Meija Seika Kaisha (Jp '767), Juhachisakari Shuzo (Jp '380), Kikunoka Shuzo (Jp '882),), Hashimoto et al (Jp '310) and Okura Shuzo (Jp '471) for the reasons fully and clearly detailed in the Office action mailed 2/26/03, 8/1/03, and 10/31/03.

All of the independent claims now include the recitation previously found (and considered) in the dependent claims, that the ear of rice is the same variety of rice as used to brew the sake. This recitation has been both considered and addressed in previous actions. That is, the art, taken as a whole, unequivocally teaches that is was conventional to add to a beverage container, plant material that makes up an ingredient of the beverage for display or decorative purposes and for identifing a component of the liquid. These teachings are seen to be a generic teaching that using in a product such as a beverage, plant material both as a decorative item and as an indicator of the composition of the beverage, it would have been obvious to add a particular plant material for the specific product/beverage one is desirous of decorative and/or providing information on the beverage composition. That is, once it is known to add a cherry to

cherry flavored liquer or a sprig of herb to make liquid flavored with that herb, to add the type of rice plant used to make sake would have been obvious since the rice plant like the cherry or sprig of herb communicates to the consumer what was used to make the product. In a sense, it is a type of indicia, not essentially different from a label describing the ingredients or showing the ingredient in print form. New claims 21-23 are rejected for the same reasons give above and previously.

All of applicant's remarks filed 1/26/04 have been fully and carefully considered but are not found to be convincing essentially for the reasons given previously and above.

Applicant only urges that none of the prior art discloses the combination of sake and an ear of the variety of rice used in the brewing of the sake. This urging does not address the 35USC 103, obviousness rejection over a combination of references, but instead is an urging of novelty. Claims must be both novel and unobvious. As noted previously and above, the art taken as a whole fairly teaches one of ordinary skill in the art to combine a liquid product and the type of plant material that is used to make the product both for decorative purposes and a means of conveying information to the consumer as to the liquid composition. To modify the combination and substitute one conventional plant and beverage for another conventional plant and beverage for its art recognized and applicants intended function (i.e. decoration and information transmission) is seen to have been obvious.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (571) 272-1201.

S. Weinstein/af
April 16, 2004

STEVE WEINSTEIN
PRIMARY EXAMINER 1761
4/26/04